STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J.A. PUNG, Minor.

UNPUBLISHED
March 6, 2014

No. 314405
St. Clair Circuit Court
Family Division
LC No. 12-000007-NA

Before: MURPHY, C.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (c)(*ii*), and (g). We affirm the termination of respondent's parental rights.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent first argues that the trial court clearly erred in finding that the statutory grounds for termination had been established by clear and convincing evidence. We conclude that the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(a)(*ii*) (desertion for 91 or more days and no attempt at custody) and (g) (failure to provide proper care or custody). There is no need to examine whether the court clearly erred with respect to invoking § 19b(3)(c)(*i*) and (*ii*), because, as noted above, only one statutory ground needed to be established. There was undisputed evidence that respondent had not seen and had not been in contact with the child for over seven years, effectively deserting him. Prior to the protective proceedings, respondent had not sought to exercise custody of the child through

the court system, nor sought to enforce any legal or physical custody rights or parenting time rights that she may have had pursuant to her divorce with the child's father years earlier.[1] The Department of Human Services (DHS) initially commenced the proceedings because the father allegedly attempted suicide and committed an act of criminal sexual conduct against a stepdaughter.

Respondent claimed that she had not made any efforts regarding custody and contact and that she would not return to Michigan, given her fear that, in reprisal of such efforts, the father and his parents would do harm to her, the child, and to another one of respondent's children living with her in Georgia. The caseworker testified that the paternal grandparents, with whom the child was residing, did not have criminal records, nor did the caseworker find any support for respondent's claims that the grandparents had engaged in threatening and assaultive behavior against respondent. The caseworker indicated that the child, who was 14 years old at the time of termination, wished to stay with and be adopted by his grandparents, was not interested in any contact with respondent, and felt loved and safe with his grandparents. The trial court did not find respondent's claims to be substantiated or credible, and we of course defer to the court on matters of credibility. *In re Miller*, 433 Mich at 337. In sum, there was no clear error in regard to the issue concerning statutory grounds.

Respondent next contends that DHS failed to provide her with required reunification services. DHS must make reasonable efforts to reunify a child with the child's family in all cases, except where aggravated circumstances are present. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008) ("In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights."). "Before the court enters an order of disposition, the DHS must prepare a case service plan, which must include, among other things, a '[s]chedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement.'" *In re Mason*, 486 Mich at 156, quoting MCL 712A.18f(3)(d).

According to the caseworker, after respondent became aware of the proceedings and the correct address for respondent was utilized, there were over 70 phone contacts and messages between respondent and the caseworker. The caseworker testified that respondent always sounded unstable, hostile, and threatening, used foul language, offered him bribes to send the minor child to respondent in Georgia, filed false child abuse and neglect claims, and made wild and horrific accusations regarding the father and the paternal grandparents. The caseworker testified that when respondent lost power during a hurricane, she asked the caseworker to tell the

[1] Respondent's testimony at the termination trial lacked clarity regarding the custody award in the judgment of divorce, with respondent indicating at one point that she had joint physical custody and then later suggesting that the father had sole physical custody and the two of them had joint legal custody. The bottom line is that respondent had not sought to enforce or exercise any type of custody or parenting time rights; she simply removed herself from the child's life entirely.

father's family to stop cutting her power lines.[2] The caseworker indicated that respondent had an open CPS case in Georgia in regard to another child. Contrary to respondent's testimony, the caseworker also testified that back in 2004, when respondent last saw the minor child, she had pleaded guilty to domestic violence assault, assault of a police officer, and malicious destruction of property. The caseworker further testified that respondent told him that she would take parenting classes on her own in Georgia. However, she refused to engage in any other services. When the caseworker indicated that other services might very well be required, respondent replied, "absolutely not." Indeed, respondent herself testified that she would "not come to Michigan." The trial court concluded that respondent failed to cooperate with DHS and failed to avail herself of services.

In *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012), this Court, addressing, in part, a refusal to accept services, observed:

> While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered. In this instance, services were proffered, but respondents failed to either participate or demonstrate that they sufficiently benefited from the services provided.

Here, the communications between the caseworker and respondent made clear that respondent was adamant in her rejection of services and unwillingness to participate.[3] Under such circumstances, it would have been futile to proceed with attempted reunification services pursuant to a case service plan.

Finally, respondent argues that the trial court clearly erred in finding that termination was in the best interests of the child. Given the act of desertion, the failure to pursue any type of custody or parenting time action, respondent's apparent instability and her hostility, the child's wishes, and the caring environment provided for the child by the paternal grandparents, we hold that the trial court did not clearly err in finding that termination was in the best interests of the child.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens

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[2] The trial court found, in part, that respondent was mentally unstable.

[3] To the extent that respondent's testimony on the matter conflicted with the caseworker's testimony, we defer to the trial court's assessment of credibility, *In re Miller*, 433 Mich at 337, and the court, in general, did not find respondent to be credible.